- THE HON'BLE SRI JUSTICE C.Y. SOMAYAJULU
- **+W.P.No.7582 of 1996**

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%.28-10-2005.

#Pankaja S.Bhoom Reddy and others

.....Petitioners

Vs.

$The Government of AP. And others

.....Respondents

Counsel for the Petitioner : Sri.K. Palaksha Reddy

Counsel for the Respondents 1 AND 2 : G.P. FOR HOME

Counsel for Respondent No.3: Sri Deepak Bhattacharya

<Gist :

>Head Note:

? Cases referred:

1. 1997 Crl.L.J 306

THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION No.7582 of 1996

Dated 28-10-2005

Between:

Pankaja S.Bhoom Reddy and others. **.. PETITIONERS**

AND

The Government of Andhra Pradesh and others **.. RESPONDENTS**

ORAL ORDER:

Petitioners, who are the widow and minor children of S.C.Bhooma Reddy (hereinafter referred to as the deceased), filed this petition to quash the proceedings in Rc.C6/906/M/92 dated

31-12-93 of the Collector & District Magistrate, Kurnool District (second respondent) and the memo No.51204/Genl/C/94-1 dated

06-2-1995 of the Government of Andhra Pradesh (first respondent) relating to forfeiture and sale of the Revolver belonging to the deceased, on the ground of want of notice under Section 21(4) of Arms Act, 1959 (the Act) alleging that after the death of the deceased 09-01-1990 his Revolver bearing No.A.86832 and his S.B.B.L.Gun No.A.51134, both covered by Arms Licence No.361/3/ADN, were deposited in the District Police Store, Kurnool, in deposit Nos.16/90 and 15/90 respectively and while the application of the first petitioner i.e., widow of the deceased for arms licence is still pending, second respondent vide proceedings dated 31.12.1993 impugned in the petition passed orders under Section 21(3) of the Arms Act, 1959 (the Act), forfeiting the revolver of the deceased after issuing notice under Section 21(4) of the Act, dated 17-6-1993 to Suresh C.Bhoom Reddy of Adoni, who is not the legal

representative of the deceased, and also on the ground that third respondent (Mr.S.P.Singh), while manning the post of the 2nd respondent had passed that order only to enable him to purchase the revolver of the deceased at a very low price.

2. No counter or counter affidavit is filed on behalf of the first respondent.

3. The successor of the third respondent to the office of the second respondent filed his counter affidavit, inter alia, alleging that on the basis of the report received from the Superintendent of Police, Kurnool, that 26 weapons, including the two weapons of the deceased, were lying in deposit in the District Arms Dump, Kurnool, for more than one year, orders forfeiting 17 arms, including both the arms of the deceased were passed as per the provisions of the Act, and were kept ready for sale in public auction and in the meanwhile third respondent applied for allotment of one Revolver to him and obtained permission from the Government vide Memo No.30400/Genl.C/93-1 dated 22-9-1993 and so the Arms Committee of Kurnool District, in its meeting held on 27-01-1994 fixed the upset price of the revolver belonging to the deceased, and that amount, fixed by the committee, was paid by the third respondent and since notices sent to the legal heirs of the deceased were received by the brothers of the deceased, and since their applications for arms licences were rejected on the basis of the reports of the Superintendent of Police, Kurnool District, and the Sub Divisional Magistrate (Revenue Divisional Officer), Adoni, and since the notice sent to the first respondent, for her appearance on 11.10.1993 in connection with the arms licence application made by her, sent to Adoni, was returned with an endorsement that she is living in Karnataka State. In respect of the application for sale of the gun of the deceased filed by the 1st petitioner, since it was not sold after forfeiture, she was permitted to sell the same, but inasmuch as her application for sale of the revolver of the deceased was

rejected and as it was sold away after passing of the order of forfeiture duly following the procedure prescribed by the Act and the Rules made thereunder, petitioners are not entitled to any relief.

4. Though served third respondent did not choose to put in appearance either in person or through a counsel.

5. The main contention of the learned counsel for the petitioners is that since no notice was served on any of the petitioners before ordering forfeiture of the revolver of the deceased, the same is liable to be set aside, more so because third respondent while manning the post of the second respondent had with a view to purchase the said weapon at a very low price, managed to create a record to show that the procedure prescribed under the Act and the Rules made thereunder was followed, when in fact such procedure was not followed. The contention of the learned Assistant Government Pleader, on behalf of respondents 1 and 2 is that since the revolver of the deceased was forfeited after following the procedure prescribed by the Act and the Rules made thereunder only, and since third respondent purchased the same as per the price fixed by the committee, after obtaining permission from the Government, petitioners are not entitled to any relief.

6. On my direction, the learned Assistant Government Pleader produced the relevant record maintained in the office of the second respondent and I have gone through the same.

7. File No.C6/762/M/91 shows that first petitioner had on 04.1.1991 made an application to the second respondent for transfer the Revolver and the S.B.B.L.Gun of the deceased to her, enclosing the necessary documents. She also made an application for an arms licence in her favour. While those applications were pending,

the Superintendent of Police vide his letter dated 22.04.1993 addressed to the 2nd respondent, by furnishing a list of fire arms and ammunitions lying in the arms dump, which include the two weapons of the deceased, sought confiscation/forfeiture order of those weapons. It is given file No.C6/M/906/M/92. The said file contains a note that all the arms lying in the arums dumb have to be inspected by the Arms Inspecting Authority, Hyderabad, which has to issue a certificate whether they are fit for auction or for destruction, and before obtaining orders for holding public auction, notices have to be issued to the owners or legal representatives of the owners of the seized weapons, through the Station House Officer of the police station in whose jurisdiction they are residing, and that in respect of the two weapons of the deceased such notices were served on Suresh C.Bhoom Reddy in respect of deposit No.15/90 and Prabhu C.Bhoom Reddy in respect of deposit No.16/90 on 28.06.1993 and that both of them sent replies on 12.07.1993, informing that in as much as their applications dated 19.03.1990 for grant of arms licences are pending before the 2nd respondent since a long time, and since they wish to acquire the weapons of their late brother, the arms may not be forfeited. Thereafter their applications for arms licences were rejected on 30.10.1993, ignoring the letter dated 11.09.1990 in L.Dis.Rc.No.G1/2899/90 of the Superintendent of Police Kurnool, reading:

> "I recommend for the grant of S.B.B.L. gun licence to above applicant, as he is a business man, having heavy cash balance with him. The Weapon is required to his self protection."

and on the basis of the prototype letters of the Superintendent of Police, Kurnool in C.No.676/SB-XI/93 and C6/1135/M/90 both dated 07.10.1993, reading:

> "In connection with the subject cited above, discreet enquiries have been caused regarding the applicant. The issue of fresh gun licence to the applicant cited above is not recommended as there is no life threat to him perceived from any quarter."

8. File No.C6/128/M/94 shows that on 07.07.1993 3rd respondent made a representation to the Government for allotment of a weapon to him from the Arms Dump, subject to his producing a valid arms licence, at the upset price to be fixed by the committee. After the said request of his was approved, 3rd respondent had on 25.01.1994 addressed a letter to the 2nd respondent informing that as a N.P.B.Revolver bearing No.A-86832 forfeited to the Government is available in the arms dump, it may be allotted to him by fixing the upset price. On that file 3rd respondent himself, in his capacity as 2nd respondent, made the following endorsement:

> "Since the weapon is to be allotted to me. I've requested the Government in my letter dated 11-01-1994 addressed to Principal Secretary, Home Department to authorize the Joint Collector and Additional District Magistrate to be the convener of the committee to fix up the upset price of the weapon to be allotted to me. He may please convene the meeting of the committee as contemplated in G.O.Ms.No.927, Home (Gen-A) Department, dated 17-06-1970 in consultation with SP to fix up the upset price for NPB Revolver bearing No.A-86832. The weapon may be allotted to me after receipt of orders from the Government."

Sheet containing the signatures of Arms and Ammunition Dealer, Kurnool: Reserve Inspector, A.R., Kurnool: Superintendent of Police, Kurnool and Joint Collector and Additional District Magistrate, Kurnool, with regard to the revolver in deposit No.16/90 (belonging to the deceased) shows that that weapon is 50/60 years old, and that it requires repairs, and that its prevailing market value is Rs.15,000/-. The estimated cost, proposed by Arms Dealer is put at Rs.900/- and the upset price fixed at Rs.1,000/-. The remarks column in that sheet reads:

> "The weapon has been inspected by the committee members. The weapon is found to be very old and not in condition of proper maintenance and requires repairs."

Thereafter the committee fixed the upset price as Rs.1,000/-. With sales tax of Rs.170/-, besides surcharge of Rs.17/-, and an amount of Rs.1,187/- was collected from the 3rd respondent, and the said weapon was allotted to the 3rd respondent.

9. File No.C6/602/M/94 shows that on a representation made by the first petitioner to the Government on 07-02-1994, the Principal Secretary to Government, through his Memo No.7266/Genl.C/94-2, dated 19-05-1994, called for the following information from the Collector (2nd respondent).

> "1. What is the disposal given to the application of Smt.Pankaja S.Bhoomi Reddy, W/o.Late Sri S.C.Bhoomi Reddy, Adoni, Kurnool District, for grant of Arms Licence. Whether she has applied for grant of Arms Licence to a revolver and a SBBL gun and if so, whether there is any objection to grant her Arms Licence for both the weapons.
>
> 2. The Collector and District Magistrate, Kurnool is requested to send a copy of his proceedings in Rc.No.6/906/M/92, dated 28-12-1993 and also the disposal particulars of the revolver bearing No.A-86832 (vide deposit No.16/90) i.e., the name and address of the person, to whom it was sold and the amount realized thereon etc., very urgently."

For that above letter, 3rd respondent, in his capacity as 2nd respondent, sent a detailed reply stating that in as much as the applications for arms licence submitted by Smt. Pankaja S.Bhoom Reddy (1st petitioner), Sri Prabhu S.Bhoom Reddy and Sri Suresh C.Bhoom Reddy were rejected, and since those weapons are in the Arms Dump from 29.03.1990, they were forfeited to the Government, vide proceedings in Rc.C6/906/M/92, dated 28.12.1993 under Section 21(3) of the Act and were kept ready for disposal in public auction and that in the meanwhile, as holder of a licence he (3rd respondent), who was permitted to acquire revolver/pistol

from the Arms Dump in the state vide Government Memo No.30400/Genl.C/93-1, dated 22.09.1993, had applied for allotment of the revolver bearing No.A-86832 lying in deposit at the District Arms Dump, Kurnool and that the District Arms Committee, specially constituted by the Government, fixed the upset price therefor and allotted that revolver to him, after receiving the amount fixed by the committee, and since the revolver was already forfeited and sold, her application became infructuous.

10. From File No.C6/602/M/94 it is seen that on 04-03-1995 1st petitioner was granted permission to sell the gun of the deceased to S.R.Reddy on payment of the price fixed by the Government.

11. From page No.33 of the file bearing No.C6/762/M/91 it is seen that inasmuch as 2nd respondent did not pass orders on her application dated 04-01-1991, (filed within one year after the death of the deceased on 09-01-1990), petitioner put in an application which reads as follows:

> "I, Smt.Pankaja S.Bhoom Reddy W/o.late S.C.Bhoom Reddy Partner of M/s.C.S.Bhoom Reddy, Krishna Oil Mills, 17/134 A Alur Road Adoni, declare that my husband was a licence holder of the following weapons under licence No.361/3 AND: WEAPON Nos:
>
> 1. A-86832 NP Bore revolver
>
> 2. A-51134 SBBL-Gun.
>
> As I am not interested in acquiring the licence, I request you to transfer the above said weapons to Sri S.R.Reddy IDSE., Retired Chief Engineer MES who is having a licence bearing No.5410/93/J&K, dated 1-9-1993 issued by Additional Secretary to Government of J & K. (Home Department) vide their letter No.AR-103/93 dated 1-3-93 a copy of which is enclosed for ready reference.

I will be much grateful for transfer of the above weapons to Shri S.R.Reddy."

The note put up by the office before the 2nd respondent thereon reads:

"Smt.Pankaja-S-Bhoomireddy of Adoni village in the reference 1st cited has applied for grant of arms licence to her for self protection. The same was sent to the Revenue Divisional Officer & S.D.M., Adoni and S.P., Kurnool for enquiry and report (vide ref. 2nd cited). The R.D.O. & S.D.M., Adoni in his letter 3rd cited has recommended for rejection of the grant of arms licence to her. The S.P., Kurnool in his letter 4th cited has also recommended for rejection of arms licence to her. As both the R.D.O., Adoni and S.P., Kurnool have recommended for rejection of the grant of arms licence, a notice was issued to her directing to show cause within seven days from the date of receipt of the notice, as to why her application should not be rejected. She was also directed to appear for personal bearing on 11-10-1993 at 10.30 a.m., before the Collector and District Magistrate, Kurnool. She has submitted a representation dated 09-10-1993. She submitted that her husband, late S.C.Bhoom Reddy was a licence holder, that he was in possession of one N.P.B. Revolver and one SABL Gun, that she is not interested in acquiring arms licence, and has requested to transfer the above said two weapons to Sri S.R.Reddy, Karchedu village of Bellary District and holder of A/L.No.5410/93/J,SK, dated 01-09-1993 (valid upto 01-03-1996). She has enclosed the legal heir certificate issued by the Mandal Revenue Officer, Adoni in his L.Dis.No.543/90(c), dated 03-05-1990.

The above said note was approved by the 3rd respondent, in his capacity as 2nd respondent, on 28-12-1993 i.e., after the 3rd respondent entertained an idea to purchase the revolver of the deceased and sought permission from the 1st respondent to purchase the said weapon, as seen from File No.C6/128/M/94 which shows that 3rd respondent made an application for permission to acquire a weapon on 07-07-1993.

12. When 1st petitioner made a request for issuance of a licence and for transfer of the weapon of the deceased well within one year from the date of death of the deceased, and deposit of the arms, her application for allotment is very much within time as per Section 21(2)(b) of the Act read with Rule 46(4) of the Arms Rules (the Rules). Before disposal of the said application, she can amend her application by making a prayer for sale of the weapon to a licenced holder, instead of granting a licence to her. Therefore, her application dated 09-10-1993 cannot be said to be out of time, as she had only amended her prayer, but did not abandon the ownership right therein entirely, and even before final orders are passed on her earlier application rejecting her earlier prayer. Second respondent by taking his own time for disposal of the application for grant of license and transfer of the arms, which were deposited, pass an order of forfeiture, by closing the file, on untenable grounds. This view of mine that the period of limitation prescribed by Rule 46 (4) is only for making a claim, and when once the claim is made within time, forfeiture due to delay caused by the authority cannot be made, is supported by the ratio in ***ISWARAPPA V. DISTRICT MAGISTRATE, BIJAPUR*** also.

13. Since the above events show that the 3rd respondent, while holding the post of the 2nd respondent had after knowing that a revolver is lying in the arms dump at Kurnool district, filed an application seeking permission to acquire a weapon. When the application of the 1st petitioner for arms licence and for transfer of the arms were pending, and had rejected her prayer seeking transfer of the arms, to S.R.Reddy, a holder of arms licence, to whom she can legally transfer the same as per Sec.21 (2) of the Act, his rejecting her prayer in his capacity as 2nd respondent cannot but be said to be motivated. He must have passed that order only with a view to retain the benefit of the sale made in his favour even before passing any order on the original application of the 1st petitioner. So, I have no hesitation in holding that the third respondent had, with a view to acquire the Revolver of the deceased, built up a

record and managed to purchase the revolver of the deceased, which even according to the committee was having a market value of Rs.15,000/- for Rs.1,000/-, obviously taking advantage of his position as the Collector and District Magistrate, and thus obtained an advantage to himself at the expense of the petitioners. When the market price of the weapon is shown as Rs.15,000/- why and how the price payable by the 3rd respondent for that weapon was fixed at Rs.1,000/- is not explained either by the 1st or 2nd respondents. Significantly 3rd respondent did not choose to appear when the petitioners specifically made an allegation that he, had purchased the weapon of the deceased for a very low price, by taking advantage of the office he was holding at the time of its acquisition.

14. In view of the above, the sale of the revolver in favour of the 3rd respondent is liable to be and hence set aside. Third respondent shall deposit revolver purchased by him before the Superintendent of Police, Kurnool, within one month from the date of receipt of a copy of this order. Order of the 2nd respondent closing the application of the 1st petitioner for sale of the revolver to S.R.Reddy is set aside and the second respondent is directed to consider the application of the 1st petitioner for transfer of the revolver of the deceased to S.R. Reddy on merits, keeping in view the provision of Sec. 21(2) of the Arms Act and the observation made by me in this order.

15. The writ petition is ordered accordingly with costs and the Rule nisi is made absolute.

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28-10-2005

Cvrk/Prv/Stp

L.R. Copy to be marked.